

Mike Palmer, Head
Coalition to Stop Abuse of Civil Harassment Law
18402 N. 19th Ave., #109
Phoenix, AZ 85023
mikepalmer_az@yahoo.com

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO ABROGATE
RULE 25(g), ARIZONA RULES OF
PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-__-____

**Petition to Abrogate Rule 25(g),
Arizona Rules of
Protective Order Procedure**

(Emergency Action Requested)

Pursuant to Rule 28, Rules of the Supreme Court, Mike Palmer, writing on behalf of the Coalition to Stop Abuse of Civil Harassment Law,¹ petitions this Court to abrogate Rule 25(g) of the Rules of Protective Order Procedure. (The Request for Emergency Action at the end.)

I. PREFACE

This will be the sixth petition to abrogate/repeal Rule 25(g).

This Rule, which the "Justices" of our Court stubbornly refuse to repeal,

¹ The Coalition is a loose collection of Arizona residents (including a Law Enforcement officer) who have been abused by civil Injunction law. (I.e., who have been vindicated on appeal, but whose reputations will forever be tarnished - much like what happened to U.S. Supreme Court Justice Brett Kavanaugh.)

falsely represents to judicial officers that, in civil Injunctions Against Harassment (IAH's), it is Legislature's intent that judicial officers may "prohibit [defendants] from possessing, purchasing, or receiving firearms." This representation despite the fact that A.R.S. § 12-1809, the only statute governing civil IAH's, is totally silent about firearms. And, consistent with this silence, it is totally silent about any protocol to seize firearms.

Despite the silence the "Justices" have done the impossible. They have made an argument/Rule from silence!

So what's changed this time?

What's changed is that we had the Parkland School shooting (the AP's top news story of the year), Governor Ducey's knee-jerk reaction to the shooting - his proposed Bill for a Civil IAH on steroids that he called a *Severe Threat Order of Protection* (STOP), and quotes in the Press from two high ranking Legislators who publicly opposed the Governor's draconian STOP Bill on constitutional grounds.

II. BACKGROUND

Governor Ducey's proposed STOP Bill would have been a Supersized version of current civil Injunction against Harassment law. (A civil action, could be done ex parte, etc.)

Except that, in stark contrast to current civil IAH law, the Governor's Bill specifically mentioned prohibiting firearms.

Along with that prohibition, also in stark contrast to current civil IAH law, the

Governor's Bill set standards before a judge could prohibit firearms.

Specifically, before making someone a prohibited possessor, the Governor's Bill would have required 1) "clear and convincing" evidence to find that 2) a defendant presents a "credible threat of death or physical violence."

In contrast, there are no standards before making someone a prohibited possessor in a normal civil IAH. (The best it says is "good cause to exist that great or irreparable harm would result to the plaintiff." But that is the standard for mundane civil matters, like enjoining Samsung from copying Apple's patents. That is not the standard needed to find that someone presents a "credible threat of death or physical injury.")

III. PURPOSE

The Legislature rejected the Governors STOP Bill. So what's changed now is that the Legislature has made it clear that it didn't want to prohibit firearms in a civil Injunction against Harassment, even when offered Gov. Ducey's higher standard to do so.

More specifically, the Press quoted Rep. Eddie Farnsworth, then the Chairman of the House Judiciary & Public Safety Committee (now Senate President Pro Tempore & Chair of the Senate Judiciary Committee) who said "We don't want to remove people's firearms simply on an allegation. *There has to be proof that a crime has been committed ...*" (See Exhibit 1, posted as a separate PDF.) So clear was Chairman Farnsworth's intent against the Governor's proposal, that the

Governor's Bill didn't even make it to his Committee.

Since we now know that the Legislature did not want to prohibit firearms in the Governor's higher standard version of his civil Injunction Against Harassment, neither can the Legislature want to prohibit firearms in its low/no standard civil Injunctions against Harassment. I.e., it is not the Legislator's intent to prohibit firearms in civil Injunctions, contrary to what Rule 25(g) represents. Therefore, Rule 25(g) must be abrogated.

We hope that Senate Judiciary Committee Chairman Farnsworth will post a comment on our petition.

IV. A BRIEF HISTORY FOR THE NEW JUSTICE

For the new Justice replacing soon-to-be-retired "Justice" Pelander, here's a very brief history of how we got here - how Rule 25(g) came to be, since we imagine you might see Rule 25(g) as a long standing precedent. And since long standing precedents are hard to undo. (Even when unconstitutional, as we're seeing with former President Obama's DACA Executive Order.)

The earliest appearance of Rule 25(g)'s progenitor that we can find was in the 2004 version of the CIDVC's (Advisory) Domestic Violence Criminal Benchbook. In a Chapter about criminal OOP's, someone sneaked in an off-topic Note about civil Injunctions claiming that "In an IAH, the Judicial Officer may have discretion to prohibit firearms." Then, as now, there was no authority for that Note. It was someone's dicta.

Unfortunately, that dicta was codified as a Rule of Procedure when this Court adopted the CIDVC's Advisory Benchbook wholesale, making it into the Arizona Rules of Protective Order Procedure.

Since then this dicta has become dogma and it now echoes back and forth in the echo chamber of the Court. That one tiny Note has been repeated in all sorts of publications, from the Court's *"A Judge's Guide: Best Practices for Protective Orders"* to the Maricopa County Superior Court's webpage about civil Injunctions Against Harassment. Adolf Hitler said, "If you tell a big enough lie and tell it frequently enough, it will be believed." Please don't let Hitler be right.

V. REQUEST FOR EMERGENCY ACTION

Because Rule 25(g) does not reflect the intent of the Legislature, it is unconstitutional on its face.

It's also unconstitutional because it constitutes an unreasonable seizure of property (firearms) and because it deprives Arizonans their right to bear arms in defense of themselves.

No amount of citing "grant relief necessary" will change the fact that the Legislature never intended to prohibit firearms in civil IAH's. If "grant relief necessary" were really a magic incantation that could make constitutional rights disappear – as the CIDVC, and by extension, the "Justices" have claimed - then Governor Ducey could have skipped the "credible threat" language in his Bill and just put "grant relief necessary" to get it passed.

Forgetting the constitutional "crisis" aspect of this, a defendant-prohibited possessor in a civil IAH could be killed as a consequence of this made up Rule. (By not being able to defend themselves in a home invasion, carjacking, etc.) Therefore, we request that this Court act on an emergency basis to abrogate Rule 25(g).

SUBMITTED this 10th day of January 2019.

By /s/Mike Palmer